CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force		Discourt.	U.S.
Nick Kuczek		Squad #08	202303075	☑	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:			18 N	Io. SC	OL	Precinct:
Tuesday, 04/11/2023 6:55 PM		§ 87(2)(b)			10/1	1/202	24	40
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Tim	e Rece	eived at CCI	B
Wed, 04/12/2023 1:07 AM		CCRB	On-line website		Wed, 04/	12/202	3 10:33 AN	Л
Complainant/Victim	Туре	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. PO Damion Cunningham	03411	969034	040 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. PO Victor Cunha	22862	971029	040 PCT					
2. PO Bilal Malik	05735	972763	040 PCT					
3. PO Kayfia Robinson	17458	968097	040 PCT					
4. LT Julian Harris	00000	932775	040 PCT					
Officer(s)	Allegatio	on			Inv	estiga	tor Recon	nmendation
A . PO Damion Cunningham		olice Officer Damion C worn camera.	unningham imprope	rly ı	used			
B . PO Damion Cunningham	Abuse: P § 87(2)(6)	olice Officer Damion C	unningham entered e Bronx.					
C . PO Damion Cunningham	Abuse: P	olice Officer Damion C	unningham threatene	ed to	0			
D . PO Damion Cunningham	Abuse: P	olice Officer Damion C	unningham threatene	ed to	0			
E . PO Damion Cunningham		olice Officer Damion C	unningham threaten	ed to	0			
F . PO Damion Cunningham		olice Officer Damion C	unningham threaten	ed to	0			
G . PO Damion Cunningham		olice Officer Damion C	unningham threaten	ed to	0			
H . PO Damion Cunningham		olice Officer Damion C	unningham threaten	ed to	0			

Case Summary

filed this complaint with the CCRB via on-line website on April 12, 2023.

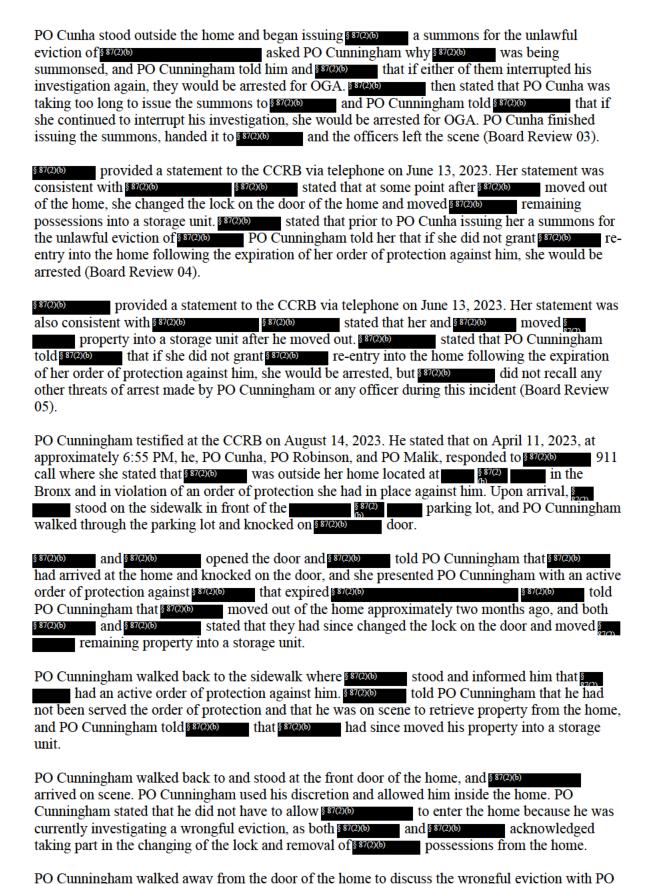
On April 11, 2023, at approximately 6:55 PM, PO Damion Cunningham, PO Victor Cunha, PO Kayfia Robinson, and PO Bilal Malik of the 40th Precinct responded to a 911 call for police assistance by § 87(2)(b) who stated that her husband, § 87(2)(b) had an active order of protection against, was trying to enter her home at Bronx. Upon arrival on scene, \$87(2)(6) Informed PO Cunningham that \$8 of the home, that she had changed the lock on the door to prevent his return, and that she and her mother. § 87(2)(b) moved § 87(2)(b) remaining property out of the home and into a storage unit. PO Cunningham did not have his BWC activated for the first 52 minutes on scene during this incident (Allegation A – Abuse of Authority: §87(2)(2) While PO Cunningham discussed the eviction of which by with PO Robinson and PO Malik outside of the home, and while PO Cunha spoke to NYPD Legal on the phone to determine whether \$87(2)(6) actions warranted a summons or an arrest, \$87(2)(b) closed the door to the home. PO Cunningham opened the door and placed his foot against the door to hold it open, beyond the threshold of the entrance of the home (Allegation B – Abuse of Authority: \$87(2)(g) Cunha concluded his phone call with NYPD Legal and it was determined that \$50,000 actions warranted a summons to be issued, which he began writing, and PO Cunningham told \$37200 that if they denied \$87(2)(6) re-entry into the home after the expiration of order of protection at 12:00 AM on April 12, 2023, they would be arrested for unlawful eviction (Allegations C and D – Abuse of Authority: 887(2)(2) Cunningham remained standing with his foot beyond the threshold of the home entrance and for OGA after she told him to remove his foot from the doorway (Allegation E – Abuse of Authority: § 87(2)(g) PO Cunningham threatened to arrest (Allegations F and G – Abuse of Authority: §87(2)(g) complained about the length of time PO Cunha was taking to issue \$87(2)(b) the summons, and PO Cunningham stated that if one more person interrupted, they would be arrested for OGA (Allegation H – Abuse of Authority: \$87(2)(9) PO Cunha issued \$87(2)(6) the summons for unlawful eviction, gave it to \$87(2)(6) and the officer left the scene. was issued a summons for Administrative Code Section 26-521(a)3: Unlawful Eviction as a result of the lock change and moving of property out of property out of (Board Review 01). The investigation obtained Body-worn camera footage (BWC) from PO Cunningham, PO Cunha, PO Robinson, and PO Malik (Board Review 02). Findings and Recommendations Allegation (A) Abuse of Authority: Police Officer Damion Cunningham improperly used his body-worn camera. PO Cunningham activated his BWC at 7:46 PM, while he and PO Cunha arrived on scene at [5700] at 6:54 PM (Board Review 02). PO Cunningham stated that he activated his BWC after one of his fellow officers told him that his BWC was not on, and he did not know if he forgot to activate it, or if he pressed the button of his BWC and it did not activate due to malfunction. PO Cunningham stated that this job was a call for service that required BWC activization upon arrival on scene (Board Review 06).

police action, including responding to calls for service (Board Review 15). was in response to a call for service that required BWC to be activated upon arrival. PO Cunningham acknowledged that his BWC was not activated upon arrival on scene and remained off for the first 52 minutes on scene. Sercole Allegation (B) Abuse of Authority: Police Officer Damion Cunningham entered in the Bronx. Allegation (C) Abuse of Authority: Police Officer Damion Cunningham threatened to arrest Allegation (D) Abuse of Authority: Police Officer Damion Cunningham threatened to arrest Allegation (E) Abuse of Authority: Police Officer Damion Cunningham threatened to arrest Allegation (F) Abuse of Authority: Police Officer Damion Cunningham threatened to arrest Allegation (G) Abuse of Authority: Police Officer Damion Cunningham threatened to arrest Allegation (H) Abuse of Authority: Police Officer Damion Cunningham threatened to arrest individuals. provided a statement to the CCRB via telephone on April 18, 2023. He stated that on April 11, 2023, at approximately 8:00 PM, he arrived at the home of his sister, \$87(2)(6) § 87(2) in the Bronx, after § 87(2)(6) called § 87(2)(6) and informed him that her husband, from whom she was seeking a divorce, \$87(2)(6) was on scene and violating an active order of protection. The temporary order of protection prevented \$87(2)(6) from having any contact with §87(2)(b) § 87(2)(b) § 87(2)(b) mother, § 87(2)(b) was present inside the home during this incident, and was the sole owner of the property. § 87(2)(6) stated that § 87(2)(b) had previously lived for several years but had moved out approximately two with § 87(2)(b) months before this incident, and he believed that was attempting to move back in during this incident. Upon arrival, \$87(2)(b) stood on the sidewalk outside of the parking lot walked through the parking lot and into \$87(2)(6) home where PO Cunningham, PO Cunha, PO Robinson, and PO Malik stood outside. stood inside the living room, and PO Cunningham and § 87(2)(b) opened the front door of the home entirely and extended his right foot approximately two feet beyond the threshold of the doorframe and stood with his foot against the door. PO Cunningham did not ask anyone for consent to enter the home and did not obtain consent from anyone to enter the home during this incident. § 87(2)(6) and § 87(2)(b) ■ all told PO Cunningham that he did not have consent to be inside the home, and PO Cunningham stated that he could be inside and needed the door to remain open because he was conducting an investigation. walked to the door and stood next to PO Cunningham and held the door with her hand but did not attempt to close it. PO Cunningham told \$87(2)(b) that if she touched him or tried to close the door, he would arrest her.

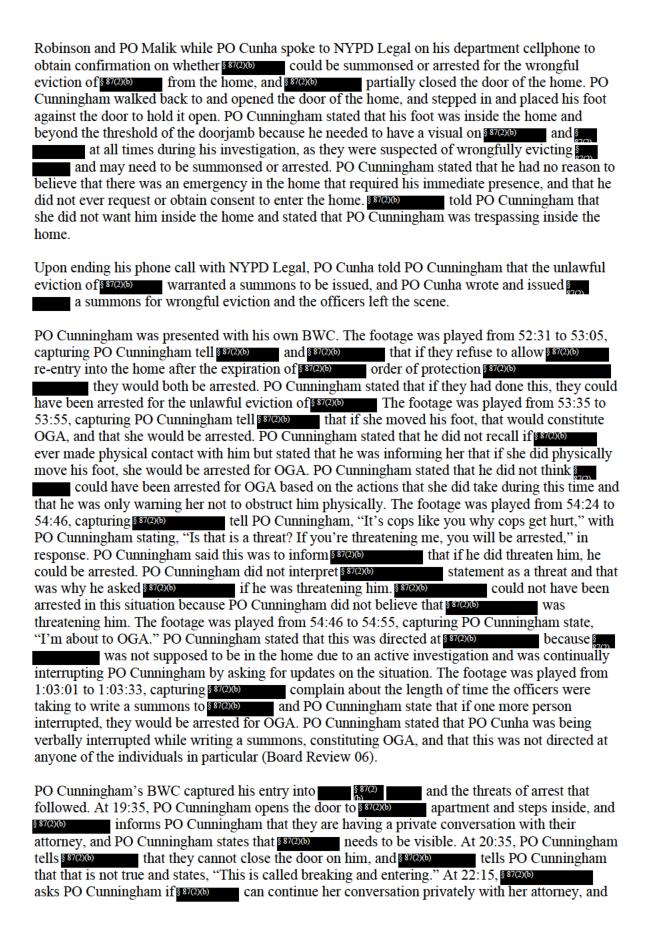
According to NYPD Patrol Guide Procedure 212-123, BWC is required to be activated during any

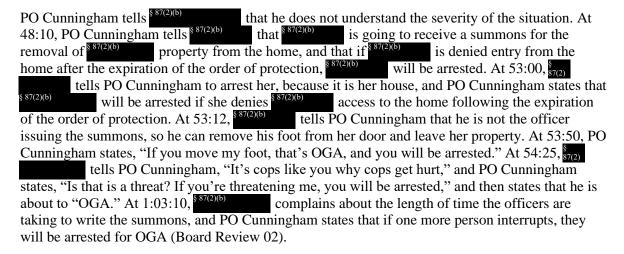
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PO Cunha, PO Robinson, and PO Malik's BWC was consistent with that of PO Cunningham's, and at 23:26 of PO Robinson's second BWC, the right half of PO Cunningham's body can be seen breaking the threshold of the door jambs of the entrance of (Board Review 02).

According to NYC Administrative Code 26-521, it shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer, by engaging in conduct which prevents or is intended to prevent such occupant from the lawful occupancy of such dwelling, including, but not limited to, removing the occupant's possessions from the dwelling unit and changing the lock on such dwelling occupant door (Board Review 07).

According to NYPD Patrol Guide Procedure 214-12, police officers may effect an arrest of a dwelling owner, defined as any person directly in indirectly in control of a dwelling such as the dwelling owner or tenant, who refuses to permit an occupant to re-enter a dwelling which they lawfully reside or through physical obstruction prevents an occupant from re-entering the dwelling (Board Review 08).

According to NY CLS Penal § 195.05, a person is guilty of obstructing governmental administration when they intentionally obstruct, impair, or prevent the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act (Board Review 09).

According to *People v. Sherman*, 116 Misc. 2d 109 (1982), verbally transmitting information to a police officer does not constitute intimidation, physical force, or interference, and therefore does not obstruct governmental administration (Board Review 10).

According to *People v. Joseph*, 156 Misc. 2d 192 (1992), to be guilty of obstruction of governmental administration, a person must take a physical act with intent to prevent an articulatable and specific official function which is both authorized and lawful (Board Review 11).

According to *People v. Reese*, 5 Misc. 3d 1030 (2004), absent consent or exigent circumstances, the threshold at the entrance of a home may not reasonably be crossed without a warrant (Board Review 12). *People v Mendoza*, 49 Misc. 3d 1007 (2015) defines such threshold of a home as the area directly between the doorjambs (Board Review 24).

According to *People v. Ormanian*, 55 Misc. 3d 566 (2016), the emergency exception permits officers to enter a protected space when they have reasonable grounds to believe an emergency is at hand and there is an immediate need for their assistance to protect life or property (Board Review 13).

In *People v. Mitchell*, 39 N.Y.2d 173 [1976], the Court of Appeals of New York stated that while warrantless entries and searches are presumptively unreasonable, an exception applies if officers "have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property," have some "reasonable basis... to associate the emergency with the area or place to be searched," and are not "primarily motivated by intent to arrest and seize evidence" (Board Review 25).

PO Cunningham acknowledged that he crossed the threshold of the entrance of the purpose of maintaining a visual on and a lack of consent to enter. He did so solely for the purpose of maintaining a visual on and and second because of the possibility that they would either be summonsed or arrested for the wrongful eviction of second secon
It is undisputed that \$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$
PO Cunningham acknowledged that when he stated, "If you move my foot, you will be arrested," he did not believe that could have been arrested and was only warning her that if she did physically move his foot, she would be arrested for OGA.
While PO Cunningham stated that he was not threatening with arrest for his statement of, "It's cops like you why cops get hurt," PO Cunningham's statement of, "Is that a threat? If you're threatening me, you will be arrested," was made directly after statement.
PO Cunningham acknowledged that his statement of, "I'm about to OGA," was directed at and that he stated this because was inside was inside where he was not supposed to be, and because was repeatedly asking for updates on the situation. PO Cunningham stated that he allowed to be present inside the home during his investigation. BWC revealed that

Cunningham or any police officer for updates on the situation during this incident and his verbal interactions with officers were minimal.
PO Cunningham stated that his statement of, "One more person interrupts, it's going to be OGA," was not directed at anyone in particular, and he stated that he said this because and were verbally interrupting PO Cunha while he was writing summons. PO Cunningham made this statement directly after made several comments regarding the length of time it was taking PO Cunha to finish writing the summons. Neither nor were saying anything when PO Cunningham makes this threat saying anything when PO Cunningham ma
Civilian and Officer CCRB Histories
• This is the first CCRB complaint to which \$87(2)(b) has been a party (Board Review 16)
• This is the first CCRB complaint to which \$87(2)(b) has been a party (Board Review 17).
• This is the first CCRB complaint to which \$87000 has been a party (Board Review 18).
• PO Cunningham has been a member of service since January 06, 2020, and has been a subject in one CCRB complaint and three allegations. To date, this investigation is still open.
Mediation, Civil, and Criminal Histories
• §§(2)(5) declined to mediate this complaint.
 As of August 14, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (Board Review 20).
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

RPBP History

• This complaint did not contain any allegations of Racial Proffling/Blas-Based Policing.							
Squad:	8						
Investigator:	Nicholas Kuczek Signature	Investigator Nicholas Kuczek Print Title & Name	09/05/2023 Date				
Squad Leader:	Ethan De Angelo Signature	IM Ethan De Angelo Print Title & Name	09/06/2023 Date				
Reviewer: _	Signature	Print Title & Name	Date				